

JIM GIBBONS
Governor

STATE OF NEVADA

ANDREW J. MACKAY
Chairman

DIANNE CORNWALL
Director, Business and Industry



MICHAEL J. KLOBERDANZ
Commissioner

MONICA B METZ
Commissioner

DEPARTMENT OF BUSINESS AND INDUSTRY NEVADA TRANSPORTATION AUTHORITY

A duly authorized meeting of the Nevada Transportation Authority was held on **Thursday, September 30, 2010 at 10:00am** at the Authority's offices located at 2290 South Jones Blvd., Suite #110, Las Vegas, Nevada and 1755 East Plumb Ln., Suite #216, Reno, Nevada.

MINUTES OF THE MEETING

1. **Call to Order**
2. **Roll Call; Attending in Las Vegas were Commissioner Michael Klobberdanz, Commissioner Monica Metz, Administrative Attorney Jim Day, Applications Manager Liz Babcock, Financial Analyst Yvonne Shelton, Financial Analyst Lidia Aronova, Chief Inspector Michael Bradford, Senior Deputy Attorney General David Newton, and Deputy Attorney General Christopher Eccles. Attending in Reno were Chairman Andrew MacKay and Deputy Commissioner Marilyn Skibinski.**
3. **Pledge of Allegiance**
4. ****Approval of Agenda; Applications Manager Babcock requested that item 10.d) be pulled from the Agenda and also noted that the docket number listed for item 14.a)1) should read "09-03035." Senior Deputy Attorney General David Newton opined that the errant docket number did not defeat proper noticing of the item in this instance. Commissioner Metz requested that items 14.c)1), 14.c)19), and 14.c)20) be set aside for discussion. The Authority voted 3-0 to approve the Agenda as modified.**
5. ****Approval of the Minutes of the August 26, 2010 Agenda Meeting: The Authority voted 3-0 to approve the minutes of the August 26, 2010 General Session.**
6. **Briefings from the Commissioners; Commissioner Metz stated that she has received from the Legislative Counsel Bureau ("LCB") the fully reviewed copy of the submitted rulemaking dockets, is in the process of reviewing the LCB's changes, and will be sending out notice of a final adoption hearing soon. Chairman MacKay stated that he had a meeting with the budget office on Wednesday September 29, 2010.**
7. **Briefing from the Deputy Commissioner: Deputy Commissioner Skibinski stated that the agency budget has been submitted and there were basically no questions on it. The Deputy Commissioner answered an inquiry from Commissioner Metz regarding the release of the Governor's recommended budget.**

8. **Report of Legal Counsel:** Senior Deputy Attorney General Newton stated the Nevada Supreme Court has once again denied Mr. Belssner's request for further review of his case. Mr. Newton also reported that all parties requesting to participate in the Handicab district court appeal were granted leave to participate. Finally, Mr. Newton reported that an opening brief has been received in the Omni matter and his reply brief is due in one week.

9. ****Applications for Fully Regulated Carriers**

- a) **Docket No. 08-02013** The Application of J & J Tours, Inc. d/b/a J & J tours to operate as a contract motor carrier of passengers within the State of Nevada. Deputy Commissioner's Motion to Dismiss Application. Deputy Attorney General Eccles summarized the Application and Motion history and submitted for review evidence of proper notice. Commissioner Metz noted that the Applicant failed to appear to defend against the Motion to Dismiss. The Authority voted 3-0 to approve the Motion to Dismiss Application.
- b) **Docket No. 09-02011** The Application of Silver Eagle Relocation Services, Inc. for a Certificate of Public Convenience and Necessity to provide the transportation of household goods in the State of Nevada. Deputy Commissioner's Motion to Dismiss Application. Chairman MacKay summarized the Application and Motion history and stated that an electronic mail message was received from the Applicant immediately prior to the Agenda Meeting. Deputy Attorney General Eccles objected to the e-mail as evidence. Applications Manager Babcock stated that she did not inform the Applicant that information was incomplete after his last submission, but Commissioner Metz pointed out that the missing information was originally requested by Staff on March 20, 2009. Deputy Commissioner Skibinski stated that time and resources must be devoted to Applicants who are available and prepared during the Application process. The Authority voted 3-0 to grant the Deputy Commissioner's Motion to Dismiss the Application.

10. ****Financial Rates and Tariffs**

- a) **Docket No. 10-03001-B** The Application of South West Auto Towing, LLC for approval of a tariff rate modification for tow car services conducted under Certificate of Public Convenience and Necessity (CPCN) 7226, Sub 2. Staff investigation concluded. Laura Ritter was present on behalf of the Applicant. Financial Analyst Shelton summarized the Application and recommended approval. The Authority voted 3-0 to approve the Application.
- b) **Docket No. 10-06020** The Application of American Investment Enterprises, Inc. d/b/a Nevada Medi-Car for approval of a tariff rate modification for non-emergency medical transportation services conducted under Certificate of Public Convenience and Necessity (CPCN) 1034. Staff investigation concluded. T. Greenway and Joe Franzini were present on behalf of the Applicant. Financial Analyst Shelton summarized the Application and recommended approval. The Authority voted 3-0 to approve the Application.
- c) **Docket No. 10-08013** The Application of Nevada Coaches d/b/a Showtime Charters for approval of a tariff rate modification for scenic tour, airport transfer, and special services conducted under Certificate of Public Convenience and Necessity (CPCN) 2114. Staff investigation concluded. Lisade Marigny was present on behalf of the Applicant. Financial Analyst Shelton summarized the Application and recommended approval. The Authority voted 3-0 to approve the Application.

- d) ~~Docket No. 10-08022~~ The Application of Exotic Limousines, Inc. d/b/a Exotic Limousines for approval of a tariff rate modification for charter limousine services conducted under Certificate of Public Convenience and Necessity (CPCN) 1095. Staff investigation concluded. **Pulled from Agenda**
- e) **Docket No. 10-09002** The Application of 24/7 Limousines, LTD for approval of a tariff rate modification for charter limousine services conducted under Certificate of Public Convenience and Necessity (CPCN) 1088, Sub 1. Staff investigation concluded. **Tony Clark was present on behalf of the Applicant. Financial Analyst Shelton summarized the Application and recommended approval. The Authority voted 3-0 to approve the Application.**
- f) **Docket No. 10-09008** The Application of Ritz Transportation, Inc. for approval of a tariff rate modification for airport transfer services conducted under Certificate of Public Convenience and Necessity (CPCN) 1089. Staff investigation concluded. **Items 10.f and 10.g were handled as a block. Brent Carson, Esq., was present on behalf of the Applicant. Financial Analyst Shelton summarized the Applications and recommended approval. The Authority voted 3-0 to approve the Applications.**
- g) **Docket No. 10-09009** The Application of Ritz Transportation, Inc. for approval of a tariff rate modification for airport transfer services conducted under Certificate of Public Convenience and Necessity (CPCN) 2055. Staff investigation concluded. **See item 10.f).**
- h) **Docket No. 10-09011** The Application of Alan Waxler Group Charter Service, LLC d/b/a AWG Charter Service for approval of a tariff rate modification for charter limousine services conducted under Certificate of Public Convenience and Necessity (CPCN) 1068, Sub 3. Staff investigation concluded. **Items 10.h and 10.i were handled as a block. Brent Carson, Esq., was present on behalf of the Applicant. Financial Analyst Shelton summarized the Applications and recommended approval. The Authority voted 3-0 to approve the Applications.**
- i) **Docket No. 10-09012** The Application of Ambassador Limousine Limited Partnership d/b/a Ambassador Limousine for approval of a tariff rate modification for charter service by limousine conducted under Certificate of Public Convenience and Necessity (CPCN) 1041, Sub 2. Staff investigation concluded. **See item 10.h).**

11. **Petition for Reconsideration

Docket No. 10-09017 In reference to Citation 15167, issued to Nico Kasper for violations of NAC 706.247/ 49 CFR 392.5 and of NAC 706 as amended by LCB File No. R127-07(1). Respondent's Petition for Reconsideration of the Final Order of the Authority issued at their August 16, 2010 General Session. (MBM) **Tony Clark and Nico Kasper were present on behalf of the Petitioner. Commissioner Metz summarized the Petition and Citation history and recommended that the Authority's prior Order be amended to reduce the fine amount to \$200.00, the standard amount had the Respondent not failed to appear. Mr. Clark and Mr. Kasper apologized for the miscommunication regarding the Citation and did not object to Commissioner Metz's Motion. The Authority voted 3-0 to issue an amended Order as recommended.**

12. Notices (No action required)

Docket No. 10-09013 The voluntary cancellation by Swanson Investments of Nevada, LLC d/b/a Southern Nevada Towing of Certificate of Public Convenience and Necessity (CPCN) 7245. Staff investigation concluded.

13. **Discussion Items:

- a) **Docket No 10-06016** At its June General Session, the Authority initiated an investigation pursuant to NRS 706.321(4) of the rates of certificated tow carriers for auction preparation fees and assigned Chairman Andrew J. MacKay as Presiding Officer in the matter. Chairman MacKay will report his findings. After hearing, the Authority may order changes as may be just and reasonable. Chairman MacKay summarized the matter and his investigation, and offered a memorandum setting forth his findings and recommendations. The Chairman stated that he does not believe there needs be a uniform auction prep fee, but that the fee should be better defined. Senior Deputy Attorney General Newton stated that he felt the Chairman was dangerously close to ad hoc rulemaking. Commissioner Metz suggested adding a definition to the rulemaking docket or to the uniform tow tariff. Senior Deputy Attorney General Newton requested that the Chairman's memo be included in the Minutes (the memo is attached as Exhibit A).
- b) **Docket No. 10-06017** Authority Staff's request for Authority direction regarding the removal of the North Las Vegas Police Department City Fee from tow tariffs. Tabled from the Authority's June 17, 2010 General Session. Senior Deputy Attorney General Newton stated that he received information regarding the City of Henderson from Clark Whitney and subsequently contacted Henderson to inform them that they cannot charge the fee. Henderson stated that the fee would be removed from their RFP. The Authority voted 3-0 to table the item until the next Agenda Meeting.

14. **Consent Items:

- a) Applications for Certificates of Public Convenience and Necessity to Provide Charter Bus Service
- 1) **Docket No. 10-09035** The Application of Lets Go Tours, LLC d/b/a Grand Tours for a Certificate of Public Convenience and Necessity to provide charter bus service within the State of Nevada. Staff investigation concluded. Applications Manager Babcock summarized the Application and recommended approval. Commissioner Kloberdanz echoed the support of Staff. The Authority voted 3-0 to approve the Application.
- 2) **Docket No. 10-05007** The Joint Application of Larry Ewell, deceased, for authority to sell and transfer and of Virginia Ewell to purchase and acquire 50% of the membership units of LD Tours, LLC, a carrier authorized to provide charter bus service under Certificate of Public Convenience and Necessity (CPCN) 2013, Sub 1. Staff investigation concluded. Items 14.a)2) and 14.a)3) were handled together. Applications Manager Babcock summarized the Applications and recommended approval. The Authority voted 3-0 to approve the Applications.

- 3) **Docket No. 10-05008** The Joint Application of Virginia Ewell for authority to sell and transfer and of Robert Harper and Mark Johnson to purchase and acquire 96% of the membership units of LD Tours, LLC, a carrier authorized to provide charter bus service under Certificate of Public Convenience and Necessity (CPCN) 2013, Sub 1. Staff investigation concluded. See Item 14.a)2).
- 4) **Docket No. 10-07022** The Application of Royalty Limos, LLC d/b/a Royalty Limos for a Certificate of Public Convenience and Necessity to provide charter bus service within the State of Nevada. Staff investigation concluded. Kimberly Rushton, Esq., was present on behalf of the Applicant. Applications Manager Babcock summarized the Application and recommended approval. The Authority voted 3-0 to approve the Application.

b) Applications for Certificates of Public Convenience and Necessity to Provide Tow Car Service

- 1) **Docket No. 09-08020** The Joint Application of Minuteman Towing, LLC for authority to sell and transfer and of New Your Minuteman, Inc. d/b/a Minuteman Towing to purchase and acquire the authority to provide tow car service by tow car vehicle within the State of Nevada granted under Certificate of Public Convenience and Necessity (CPCN) 7135, Sub 2. Staff investigation concluded. Italia Caracappa and Anthony Nobile were present on behalf of the Applicant. Applications Manager Babcock summarized the Application and recommended approval. Commissioner Metz asked about the new owners. The Authority voted 3-0 to approve the Application.

Chairman MacKay was absent during items 14.b)2 and 14.b)3 for a phone call and therefore did not participate in voting.

- 2) **Docket No. 10-01007** The Application of Alex Towing, Inc. for a certificate of public convenience and necessity to provide tow car service by tow car within the State of Nevada. Staff investigation concluded. Applications Manager Babcock summarized the Application and recommended approval. The Authority voted 2-0 to approve the Application.
 - 3) **Docket No. 10-06003** The Application of Maribel Vela Moreno d/b/a JC Towing for a Certificate of Public Convenience and Necessity to provide tow car service by tow car within the State of Nevada. Staff investigation concluded. Applications Manager Babcock summarized the Application and recommended approval. The Authority voted 2-0 to approve the Application.
 - 4) **Docket No. 10-06026** The Application of Desiree Ostrenger d/b/a Desert Towing for authority to sell and transfer and of Desert Towing, LLC to purchase and acquire the authority to provide tow car service by tow car vehicle within the State of Nevada granted under Certificate of Public Convenience and Necessity (CPCN) 7116, Sub 1. Staff investigation concluded. Applications Manager Babcock summarized the Application and recommended approval. The Authority voted 3-0 to approve the Application.
- c) Administrative Citations and Impoundments: Chairman MacKay explained that the following items were administrative citation and impound matters in which either Staff submitted a Settlement Agreement for approval or a hearing officer presided over the hearing with respect to the alleged violation(s), made findings, and provided recommendations with respect to appropriate fines and/or other remedies. Chairman MacKay explained that the

items are voted on in a block. The Authority voted 3-0 to approve items 14.c)2)-14.c)31) excluding items 14.c)5, 14.c)8), 14.c)19, 14.c)20, and 14.c)27).

- 1) **Citation 14218** issued to El Camino Charter Lines, Inc. for a violation of NAC 706.206. (AJM) **Commissioner Metz stated that she respectfully disagrees with the interpretation of the regulation. Chairman MacKay defended his interpretation. The Authority voted 2-1 to approve the Order with Commissioner Metz dissenting.**
- 2) **Citation 14269** issued to Stephen Ronald Johnson for a violation of NAC 706 as amended by LCB File No. R127-07(1). (AJM)
- 3) **Citation 14272** issued to Bighorn Towing Inc for a violation of NAC 706.420. (AJM)
- 4) **Citation 14273** issued to Patrick Kevin Thompson for violations of NAC 706 as amended by LCB File No. R127-07(1) and NAC 706.247/49 CFR 391.41. (AJM)
- 5) **Citation 14274** issued to Edward James Cote for violations of NRS 706.386 and NRS 706.758. (AJM) **Items 14.c)5) and 14.c)8) were discussed together. Anne Laughlin, Esq., was present on behalf of the Respondent and stated that the Respondent believed he was performing an interstate transport. Chairman MacKay asked if this was a request for a rehearing based on new evidence. Senior Deputy Attorney General Newton stated the Staff's objection to the matter being reheard. Commissioner Metz noted for the record that she listened to the hearing and the right to counsel was thoroughly covered as well as the option to wait for the Citation hearing date. Commissioner Kloberdanz agreed and stated his conclusion that the matter need not be reheard. Chairman MacKay stated his reasons for not being inclined to grant a rehearing. The Authority voted 2-0 to approve the Order as submitted with Commissioner Kloberdanz abstaining due to absence at the time of the vote.**
- 6) **Citation 14459** issued to Russell Gerig for a violation of NAC 706 as amended by LCB File No. R127-07(1). (AJM)
- 7) **Citation 15194** issued to Jason Brawer for a violation of NAC 706.329. (AJM)
- 8) **Impound 1538** The impoundment pursuant to NRS 706.476 of a vehicle registered to Pacific Crest Transportation. (AJM) **See item 14.c)5).**
- 9) **Impound 1604 and Citation 15263** The impoundment pursuant to NRS 706.476 of a vehicle registered to and Citation 15263 issued to Barry Oliver for violations of NRS 706.386 and NRS 706.758. (AJM)
- 10) **Impound 1527 and Citation 14461** The impoundment pursuant to NRS 706.476 of a vehicle registered to and Citation 14461 issued to Debra Gibbs dba Lodi Limo for violations of NRS 706.386 and NRS 706.758. (AJM)
- 11) **Citation 14738** issued to Konstantinos Kouris for a violation of NRS 706.758. (MJK)
- 12) **Citation 15166** issued to Tanyalynn Rose Davis for violations of NRS 706.386 and NRS 706.758. (MJK)

- 13) Citation 15193** issued to Snezana Baker for violations of NAC 706 as amended by LCB File No. R127-07(1) and NAC 706.228(5) as amended by LCB File No. R127-07. (MJK)
- 14) Impound 1721** The impoundment pursuant to NRS 706.476 of a vehicle registered to Gary Ransdell. (MJK)
- 15) Impound 1748** The impoundment pursuant to NRS 706.476 of a vehicle registered to Bridget Marie Jeffries. (MJK)
- 16) Impound 1749 and Citation 15119** The impoundment pursuant to NRS 706.476 of a vehicle registered to and Citation 15119 issued to Lon Christopher Hall for violations of NRS 706.386 and NRS 706.758. (MJK)
- 17) Impound 1751 and Citation 15265** The impoundment pursuant to NRS 706.476 of a vehicle registered to and Citation 15265 issued to Gerald Harbaugh for violations of NRS 706.386 and NRS 706.758. (MJK)
- 18) Impound 1752 and Citation 15232** The impoundment pursuant to NRS 706.476 of a vehicle registered to and Citation 15232 issued to Patrick Michael Rivera for violations of NRS 706.386 and NRS 706.758. (MJK)
- 19) Citation 14212** issued to Bosch Motors Towing for violations of NAC 706.247/ 49 CFR 391.43 (2 counts). **Items 14.c)19) and 14.c)20) were handled together. Commissioner Metz requested that follow-up risk-based operational inspections be added to the Orders. Commissioner Kloberdanz stated that it was a good idea. Commissioner Metz and Deputy Commissioner Skibinski discussed operational inspection procedure and forms. The Authority voted 3-0 to approve the Orders as modified.**
- 20) Citation 14338 and 14339** issued to Desiree Ostrenger dba Desert Towing for violations of NAC 706.247/49 CFR 382.305, NAC 706.247/49 CFR 382.43 and NAC 706.247/49 CFR 396.11. **See item 14.c)19).**
- 21) Citation 14457** issued to Alan Wayne Colbeth for a violation of NAC 706.247/ 49 CFR 391.41.
- 22) Citations 15045, 15046, 15047, 15048 and 15093** issued to Ken Lehman Enterprises d/b/a South Strip Towing for violations of NAC 706.420 (46 counts).
- 23) Citation 15060** issued to Adventure Photo Tours for violations of NAC 706.140 (37 counts) and NAC 706.212.
- 24) Citation 15115** issued to Pack-Rat NV #1, LLC for violations of NAC 706.311 (101 counts) and NRS 706.398.
- 25) Citation 15117** issued to Pack-Rat NV #1, LLC for a violation of NAC 706.206.
- 26) Citation 15174** issued to Terefe Kassaye Beyene for violations of NAC 706.329 and NAC 706.354.

27) Citation 15183 issued to City Towing Inc dba Quality Towing for violations of NAC 706.420 (279 counts) and NAC 706.311 (6 counts). **Michael Geeser of AAA Insurance was present on behalf of the Complainant. Scott Scherer, Esq., was present on behalf of the Respondent. Senior Deputy Attorney General Newton set forth his interpretation of the regulation and explained that the settlement represents a negotiated resolution. Mr. Newton further stated that there was an issue regarding initial notification of these complaints and that future complaints will be more strictly scrutinized. Commissioner Metz and Senior Deputy Attorney General discussed the changes in billing practices that will be implemented by the tow operators. Senior Deputy Attorney General Newton also stated that he had not looked in depth at NAC 706.420 prior to the complaint and that the rest of the industry was likely similarly unaware of exactly what information must appear on a tow bill. Finally, Mr. Newton noted that the fine amounts take into account unsubstantiated items as well as those that were unsubstantiated only at the time of the complaint and later substantiated. The Authority voted 3-0 to approve the proposed Order without modification.**

28) Citation 15196 issued to The Tow Truck Company for violations of NAC 706.420 and NAC 706.4477 as amended by LCB File No. R 127-08.

29) Citation 15259 issued to Desert Portable Storage dba PODS for a violation of NAC 706.311.

30) Citation 15261 issued to Anthony Barron for violations of NRS 706.386 and NRS 706.758.

31) Citation 15266 issued to Javier Gonzalez-Cava for violations of NAC 706.228 as amended by LCB file No. R127-07 (1) and (5).

15. Public Comment **No one present for comment.**

16. Adjournment **12:55pm**

** Denotes the Authority is expected to consider and may take action on this matter.

EXHIBIT A

JIM GIBBONS
Governor

DIANNE CORNWALL
Director
Business and Industry

STATE OF NEVADA



ANDREW J. MACKAY
Chairman

MICHAEL J. KLOBERDANZ
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DEPARTMENT OF BUSINESS AND INDUSTRY **NEVADA TRANSPORTATION AUTHORITY**

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MEMORANDUM

TO: Commissioner Kloberdanz & Commissioner Metz
FROM: Andrew J. MacKay, Chairman
DATE: September 20, 2010
SUBJECT: Auction Preparation Fees

As you recall, at the June 17, 2010 General Session of the Nevada Transportation Authority ("Authority"), the Authority assigned me - pursuant to NRS 706.321(4) - as Presiding Officer of Docket No. 10-06016 to gather information and solicit public and industry comment regarding the rates charged by certificated tow car operators for auction preparation fees. On July 13, 2010, the Authority published notice of an information gathering workshop to be held on August 3, 2010.

Upon calling the workshop to order, I expressed my concern that certain operators do not have a specified time in which the auction prep fee maybe charged, and that NTA enforcement in certain instances has observed the fee being charged to consumers after their respective vehicle was in storage or 3-4 days. I informed those in attendance that my goal was to, among other things: create uniformity with respect to when an auction preparation fee can be charged to the consumer; to better understand what miscellaneous expenditures incurred by the tow car operator constitute auction preparation fees; determine the appropriateness/feasibility of itemizing the specific expenditures on the tow bill with an approved percentage mark-up (similar to amenity fees charged by charter limousine operators).

Several certificated tow car operators and representatives of the insurance industry provided comment concerning auction preparation fees and the fact that setting an industry-wide standard for when the fees maybe charged shall be adopted. There was strong consensus among those present that auction preparation charges should not be charged to the registered owner or authorized representative of the vehicle sooner than 48 hours prior to beginning of the requisite advertising period informing the public of the fact that the vehicle is scheduled to be auctioned (NRS 108.310(3))¹.

¹ NRS 108.310 Satisfaction of lien; sale by auction; disposition of proceeds.

Due to the varying nature of the respective tow car companies operations, I believe that establishing a uniform rate amongst all tow operators concerning auction preparation fees would be premature at this time. I intend on addressing and exploring this issue in more detail if/when the Authority discusses and takes possible action on a uniform tariff model for tow companies. It is worth mentioning that the rates charged with respect to auction preparation fees are very broad – ranging from \$77.00 to \$495.00 with the average rate being \$326.85 – and future Authority action should be taken in order to create more consistency on charges incurred by those individuals who have had their vehicle towed without their prior consent.

In conclusion, I would recommend that the Authority shall inform all tow car operators that charge an auction preparation fee that: “Auction preparation fees may be charged **no sooner** than 48 hours prior to the first newspaper notice advertising the sale of the vehicle, pursuant to NRS 108.130(3).” Furthermore, I would recommend that the Authority provide tow car companies sixty (60) days to file a new tariff page with the proposed language or other language the Authority so chooses adopt relating to auction preparation fees.

3. After the time for the payment of the claim specified in the notice has elapsed, an advertisement of the sale, describing the motor vehicle, aircraft, motorcycle, motor or aircraft equipment, aircraft parts, trailer, recreational vehicle, mobile home or manufactured home to be sold, and stating the name of the owner or person on whose account it is held, and the time and place of the sale, must be published once a week for 3 consecutive weeks in a newspaper published in the place where the sale is to be held, but if no newspaper is published in that place, then in a newspaper published in this State that has a general circulation in that place. The sale must not be held less than 22 days after the time of the first publication